

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

L.T AND M.T. by their parent Jeffrey N. Thomas, JEFFREY N. THOMAS as parent of L.T and M.T.; T.L., B.L., R.L., A.L. by their parent Karen LeClair; KAREN LECLAIR as parent of T.L., B.L., R.L., A.L.; J.S. by his parent Danielle Schipano; DANIELLE SCHIPANO as parent of J.S.; B.P by his parent Andrea Penamora, ANDREA PENAMORA as parent of B.P.; E.W. by her parent Joseph Whitehead; and JOSEPH WHITEHEAD as parent of E.W.

Plaintiffs,

vs.

HOWARD A. ZUCKER, in his official capacity and in his individual capacity,

Defendant.

Civil Action No.: 21-cv-1034 (LEK/DJS)
Order to Show Cause

**ORDER TO SHOW CAUSE
with a request for a
TEMPORARY RESTRAINING ORDER**

The Court has considered the plaintiffs' verified complaint sworn to on September 20, 2021, the affirmation of attorney Thomas Marcelle dated September 27, 2021, the declarations of plaintiffs' experts Jayanta Bhattacharya, Nicholas Kardaras, Daniel Stock, Lauren Capriola and Stephen Petty, plaintiffs' memorandum of law, and all other proceedings and filings had herein. On the basis of these pleadings and papers, plaintiffs have sufficiently shown cause that the Court should dispense with the notice of motion requirement of Local Rule 7.1(b). Therefore, the Court is of the opinion that an order to show cause should be granted:

IT IS ORDERED that:

The defendant show cause before a term of this Court to be held at the Federal Courthouse, _____, New York on the ____ day of ____, 2021, at ____ o'clock in the ____ of that day, or as soon thereafter as counsel may be heard, why a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) should not be issued enjoining defendant from enforcing that part of 10 NYCRR § 2.60 requiring primary and secondary students to wear masks until the Court hears and determines plaintiffs' motion for a preliminary injunction and why such other and further relief should not be granted to plaintiffs that to this Court may seem just and proper,

IT IS FURTHER ORDERED that:

Plaintiffs shall serve a copy of this Order together with all papers in support of plaintiffs' Order to Show Cause, upon Defendant Howard Zucker by delivering the same to his office, the New York State Department of Health, located at Corning Tower, Empire State Plaza, Albany, New York no later than ____ on the ____ day of September 2021 and upon the New York State Attorney General Letitia James at the location she has designated for personal service of papers at the Empire State Plaza, Justice Building, 2nd Floor, Albany, NY 12224 no later than ____ on the ____ day of September 2021.

AND

IT IS FURTHER ORDERED that:

Defendant shall file and serve answering papers on the plaintiffs' attorney on or before ____ day of September 2021 with respect to plaintiffs' request for a temporary restraining order;

Plaintiffs may file and serve a reply memorandum not to exceed twenty pages on the defendants' attorney on or before ____day of October, 2021;

AND

IT IS FURTHER ORDERED that:

The defendants show cause before a term of this Court to be held at the Federal Courthouse, _____, New York on the ____ day of ____, 2021, at ____ o'clock in the ____ of that day, or as soon thereafter as counsel may be heard, why a preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a) should not be issued enjoining defendant from enforcing that part of 10 NYCRR § 2.60 requiring primary and secondary students to wear masks and why such other and further relief should not be granted to plaintiffs that to this Court may seem just and proper,

AND

IT IS FURTHER ORDERED that:

The Court has considered plaintiffs' request for discovery and after having carefully weighed the need for discovery at an early juncture in the litigation against the breadth of the discovery requests and the prejudice to the responding party, by considering such factors as (1) the timing and context of the discovery requests, including plaintiffs' request for a preliminary injunction hearing which has been scheduled; (2) the scope and purpose of the requests; and (3) the nature of the burden to the defendant, the Court is of the opinion that defendant shall file and serve the following documents and information on the plaintiffs' attorney on or before ____day of October 2021:

- (1) All studies, opinions, papers, data, and statistics relied upon by Defendant in his attempt to ascertain the harm and risk of Covid-19 (and all of its variants) to children under 18 years of age;

(2) All studies, opinions, papers, data, and statistics that were rejected by Defendant in his attempt to ascertain the harm and risk of Covid-19 (and all of its variants) to children under 18 years of age;

(3) All studies, opinions, papers, data, and statistics relied upon by Defendant in his attempt to ascertain that masks worn by children under 18 years of age are an effective barrier to the transmission of Covid-19 (and of all its variants) in schools and in general;

(4) All studies, opinions, papers, data, and statistics that were rejected by Defendant in his attempt to ascertain that masks worn by children under 18 years of age are an effective barrier to the transmission of Covid-19 (and of all its variants) in schools and in general;

(5) All studies, opinions, papers, data, and statistics relied upon by Defendant in his attempt to ascertain that schools are a place of significant transmission of Covid-19 (and of all its variants);

(6) All studies, opinions, papers, data, and statistics that were rejected by Defendant in his attempt to ascertain that schools are a place of significant transmission of Covid-19 (and of all its variants);

(7) All studies, opinions, papers, data, and statistics relied upon by Defendant in his attempt to ascertain that children under 18 years of age are significant or substantial transmitters of Covid-19 (and of all its variants);

(8) All studies, opinions, papers, data, and statistics that were rejected by Defendant in his attempt to ascertain that children under 18 years of age are significant or substantial transmitters of Covid-19 (and of all its variants).

(9) All studies, opinions, papers, data, and statistics that were reviewed, considered or analyzed by Defendant that in any way pertained to the efficacy or inefficacy of wearing masks in inhibiting or preventing the transmission of a virus, including, but not limited to, Covid-19.

AND

IT IS FURTHER ORDERED that:

Defendant shall clearly indicate which studies, opinions, papers, data, and statistics apply to which of the nine disclosures ordered by the Court; and that defendant

provide the name of the person(s) who reviewed such studies, opinions, papers, data, and statistics to determine and/or recommend and/or reject the reliability of such studies, opinions, papers, data, and/or statistics.

Dated: September ___, 2021

Hon. Lawrence E. Kahn
United States District Judge